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Gregory P. Brock, Cal. Bar #181903  
A Member of York & Brock  
A Law Corporation  
918 Parker Street, Suite A21  
Berkeley, California 94710  
Email:gbrock@jyorklaw.com  
Telephone: (510) 841-1171  
Facsimile: (510) 841-1666

Attorneys for Plaintiff  
JAMES POINT

ORIGINAL  
FILED  
DEC 18 2007  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JAMES POINT,  
Plaintiff,

v.

UNITED STATES POSTAL SERVICE,  
KELVIN HILL, and DOES 1-10,  
Inclusive,  
Defendants

Case No.

007-06398

COMPLAINT FOR DAMAGES FOR  
PERSONAL INJURY UNDER FEDERAL  
TORT CLAIMS ACT

DEMAND FOR JURY TRIAL

Plaintiff JAMES POINT alleges damages for personal injury arising  
from this incident of at least \$250,000. Plaintiff alleges:

**JURISDICTION**

1. This is an action arising under the Federal Tort Claims  
Act, 28 USC §2671 et seq. The Court has jurisdiction over the  
subject matter of this action under 28 USC §1346(b). This action  
arises out of acts and omissions of defendant UNITED STATES POSTAL  
SERVICE ("US Postal Service") within the Northern District of  
California.

**INTRADISTRICT ASSIGNMENT**

2. Under Local Rules 3-2(c) and 3-5(b), the events giving

1 rise to this law suit occurred in San Francisco, California.  
2 Therefore, this action should be assigned to the San Francisco or  
3 Oakland Division of this Court.

4 3. Plaintiff is informed and believes, and thereon alleges  
5 that at all times mentioned herein defendant US Postal Service and  
6 DOES 1 to 5 were the owners of and defendant KELVIN HILL ("Hill")  
7 and DOES 6 to 10 were the operators of a US Postal Service truck  
8 consisting of a 1997 cab and Wabash trailer, VIN 1FUY3WDB5WL917685  
9 (hereinafter "Truck") and said operators were driving the Truck in  
10 the course and scope of their employment with the owner.

11 **CLAIM FOR NEGLIGENCE**

12 4. Plaintiff does not know the true names and capacities,  
13 whether individual, corporate, associate, public, private or  
14 otherwise, of defendants sued herein as DOES 1 through 10,  
15 inclusive, and therefore sues said defendants by such fictitious  
16 names. Plaintiff will seek leave to amend this complaint to  
17 allege the true names and capacities when ascertained.

18 5. On or about December 28, 2005, plaintiff Point was  
19 riding in a white 2002 Peterbuilt truck pulling a Kenworth trailer  
20 (the "Peterbuilt") which was traveling south on 3rd Street at or  
21 near the intersection with Evans Avenue in San Francisco,  
22 California.

23 6. On or about December 28, 2005 at said intersection,  
24 defendants, and each of them, and their agents and/or employees,  
25 negligently owned, maintained, inspected, repaired, entrusted  
26 and/or operated the Truck so as to cause it to collide with the  
27 Peterbuilt in which plaintiff was riding.

28 7. As a proximate and legal result of the actions and

1 omissions of defendants, and each of them, as aforesaid, plaintiff  
2 was hurt and injured in his health, strength and activity,  
3 sustaining shock and injury to his nervous system and person, all  
4 of which said injuries have caused and continue to cause him great  
5 mental, physical and nervous pain and suffering. Plaintiff is  
6 informed and believes and based thereon alleges that said injuries  
7 will be permanent in nature, all to his general damage within the  
8 jurisdictional limits of this court.

9 8. As a further proximate and legal result of the  
10 negligence of defendants, and each of them, as aforesaid,  
11 plaintiff has required hospitalization and medical treatment and  
12 will continue to require medical treatment in the future. Medical  
13 and incidental expenses have been incurred and will continue to be  
14 incurred on plaintiff's behalf. The exact amount of those  
15 expenses is unknown at this time but plaintiff prays leave to  
16 amend his complaint to allege the exact amount when the same is  
17 ascertained.

18 9. As a further proximate and legal result of the  
19 negligence of defendants, and each of them, as aforesaid,  
20 plaintiff has lost and will continue to lose in the future  
21 earnings and/or the capacity to earn income. The exact amount of  
22 this loss is unknown at this time but plaintiff prays leave to  
23 amend his complaint to allege the exact amount when the same is  
24 ascertained.

25 10. As a further proximate and legal result of the  
26 negligence of defendants, and each of them, as aforesaid,  
27 plaintiff has sustained losses of property and will continue to do  
28 so in the future, including but not limited to damage to personal

1 effects contained in the Peterbuilt, and will sustain such losses  
2 in the future.

3 11. A proper and valid claim was presented to the US Postal  
4 Service on June 13, 2007, and was subsequently denied on July 18,  
5 2007.

6 12. Plaintiff demands a jury.

7 **PRAYER**

8 WHEREFORE, plaintiff prays for judgment as follows:

9 13. Special damages according to proof;

10 14. General damages according to proof;

11 15. Property damages according to proof;

12 16. Costs of suit;

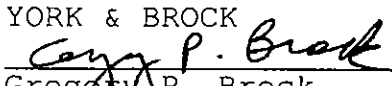
13 17. Interest;

14 18. Reasonable attorney's fees where available by law,  
15 contract, or statute; and

16 19. Such other and further relief as the court may deem  
17 proper.

18 Dated: December 17, 2007

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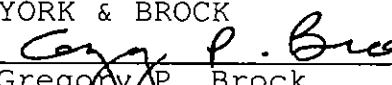
  
19 Gregory P. Brock,  
20 Attorneys for Plaintiff,  
JAMES POINT

21 **PLAINTIFF JAMES POINT'S DISCLOSURE OF NON-PARTY INTERESTED**  
22 **ENTITIES OR PERSONS [Local Rule 3-16]**

23 Pursuant to Civil L.R. 3-16, the undersigned certifies that  
24 as of this date, other than the named parties, there is no such  
25 interest to report.

26 Dated: December 17, 2007

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27 Gregory P. Brock,  
28 Attorneys for Plaintiff,  
JAMES POINT